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Supreme Court, U.S.
FILED

No. 08-47 JUL 08 2008

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In The

Supreme Court of the United States

SABAS RANGEL and MARIA BUELL,

Petitioners,

v.

COUNTY OF MONTEREY, et al.,

Respondents,

and

RANCHO SAN JUAN OPPOSITION COALITION, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether federal courts have jurisdiction, sitting as single-judge courts, to adjudicate private party actions to enforce § 203 of the Voting Rights Act of 1965, as amended in 2006, when § 204 of the Act specifically requires the convening of a three-judge court to adjudicate § 203 actions brought by the United States Attorney General and when this Court has required the convening of three-judge courts in private party actions to enforce other sections of the Voting Rights Act of 1965, as amended in 2006.

2. Whether the Order by the United States Court of Appeals for the Ninth Circuit granting a motion to dismiss the appeal as moot conflicts with its own *en banc* ruling in *Padilla v. Lever*, 463 F.3d 1046 (9th Cir. 2006), where the Court ruled under similar facts that an appeal was not moot.

PARTIES TO THE PROCEEDING

Petitioners Sabas Rangel and Maria Buell were plaintiffs in the proceedings before the United States District Court for the Northern District of California and were appellants before the United States Court of Appeals for the Ninth Circuit.

Respondents County of Monterey County, California, The Board of Supervisors of the County of Monterey, California, were defendants in the proceedings before the United States District Court for the Northern District of California and were appellees before the United States Court of Appeals for the Ninth Circuit.

Respondents Rancho San Juan Opposition Coalition, Citizens for Responsible Growth, and Julie Engell were plaintiffs in a separate action filed against the County of Monterey in the Superior Court for the County of Monterey, California. This separate state action was removed by the County to the United States District Court for the Northern District of California. The federal action was styled *Rancho San Juan Opposition Coalition, et al. v. Board of Supervisors of the County of Monterey, California*, Civil Action No. C-06-02369 JW. The District Court ordered the consolidation of the action filed by the Rancho San Juan Opposition Coalition, *et al.*, with the action filed by Sabas Rangel, *et al.* The Respondents Rancho San Juan Opposition Coalition, Citizens for Responsible Growth, and Julie Engell were appellees before the United States Court of Appeals for the Ninth Circuit.

RULE 29.6 STATEMENT

No petitioner is a corporation. There are no corporate relationships to disclose pursuant to Supreme Court Rule 29.6.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioners respectfully petition this Court for a Writ of Certiorari to review the judgment entered by the United States District Court for the Northern District of California on March 29, 2007 (App. 40) that incorporated its March 29, 2007 Order (App. 13), the Order filed by the United States Court of Appeals for the Ninth Circuit on February 19, 2008 (App. 5) and the Order filed by the United States Court of Appeals for the Ninth Circuit on April 9, 2008 (App. 1).

OPINIONS BELOW

This Petition seeks review of the Order filed on March 29, 2007 by the United States District Court for the Northern District of California denying the convening of a three-judge court to adjudicate a private party claim filed to enforce § 203 of the Voting Rights Act of 1965, as amended in 2006, 42 U.S.C. § 1973aa-1a(c). The decision is unreported (App. 13). This Petition also seeks review of the Orders filed by the United States Court of Appeals for the Ninth Circuit on February 19, 2008 dismissing this appeal (App. 5) and on April 9, 2008 denying a petition for a re-hearing *en banc* (App. 1).

JURISDICTION

The court of appeals entered its order on April 9, 2008. The jurisdiction of this court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 203 of the Voting Rights Act of 1965, as amended in 2006, 42 U.S.C. § 1973aa-1a(c) provides in relevant part:

> "Whenever any State or political subdivision subject to the prohibition of subsection (b) [statutory coverage formula for governmental units] of this section provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in the language of the applicable minority group as well as in the English language."

Section 204 of the Voting Rights Act of 1965, as amended in 2006, 42 U.S.C. § 1973aa-2 provides in relevant part: "An action under this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28 and any appeal shall be to the Supreme Court."

STATEMENT OF THE CASE

The United States District Court for Northern District of California had original jurisdiction under 28 U.S.C. §§ 1331, 1343(a)(3) and (4).

This appeal arises from efforts to apply the language translation requirements of § 203 of the Voting Rights Act, as amended in 2006, 42 U.S.C. § 1973aa-1a(c) (hereinafter cited as § 203) to a citizen-sponsored referendum petition in Monterey County, California, a jurisdiction subject to § 203. The original case (*Rangel et al. v. County of Monterey et al.*) was filed by the Petitioners, the *Rangel* plaintiffs in the District Court action, to enjoin a scheduled referendum election on the grounds that a citizen-sponsored referendum petition was not translated into Spanish prior to circulation, pursuant to § 203. The action was filed against the County of Monterey, California and its governing Board of Supervisors, the government Respondents.

The private party Respondents (Rancho San Juan Opposition Coalition, Citizens for Responsible Growth, and Julie Engell) sponsors of the referendum brought a separate action (*Rancho San Juan Opposition Coalition et al. v. Board of Supervisors of the County of Monterey et al.*) to compel the County to place the referendum on the ballot in the next election. The two cases were consolidated as "*In re Monterey Referendum.*" (App. 14-15)

The Petitioners filed a motion to convene a three-judge court to adjudicate this § 203 action. The Petitioners contended that § 204, the enforcement provision of § 203, required the convening a three-judge court. (App. 20-29)

After the United States Court of Appeals for the Ninth Circuit, in an *en banc* decision, held that citizen-sponsored recall petitions were not subject to the language translations requirements of § 203, *Padilla v. Lever*, 463 F.3d 1046 (9th Cir. 2006) (*en banc*), the District Court heard cross motions for summary judgment in the referendum petition matter involving both the *Rangel* and *Rancho San Juan Opposition Coalition* cases.

The District Court held that, in view of *Padilla,* the language translation requirements of § 203 did not apply to citizen-sponsored referendum petitions and entered judgment in favor of Monterey County on March 29, 2007 (App. 40). In addition, the District Court denied the request by the *Rangel* plaintiffs to convene a three-judge court pursuant to § 204 (App. 20-29). Subsequently on April 30, 2007, the *Rangel* plaintiffs filed an appeal to the United States Court of Appeals for the Ninth Circuit (App. 45). Petitioners' motion for an injunction pending appeal filed before the District Court was denied (App. 9) and a similar motion was denied by a motions panel of the United States Court of Appeals for the Ninth Circuit (App. 7).

After the Petitioners filed their opening brief in the *Rangel* appeal, Rancho San Juan Opposition Coalition, *et al.*, private party Respondents, filed a motion to dismiss, arguing that the appeal was moot because the referendum election that was the subject of this litigation had already occurred. A motions panel of the United States Court of Appeals for the Ninth Circuit agreed and dismissed the appeal (App. 5). The Ninth Circuit Court subsequently denied Petitioners' motion for reconsideration *en banc* (App. 1).

As a result of the Ninth Circuit Court's dismissal of the appeal as moot, the appellate Court did not reach the issue of whether a three-judge court should be convened to adjudicate an action filed by a private party to enforce the language translation requirements of § 203. The dismissal of the appeal as moot was inconsistent with the Ninth Circuit Court's *en banc* decision in *Padilla* where the appellate Court under similar facts concluded that the appeal was not moot.

Petitioners also contend that the District Court's denial of the motion to convene a three-judge court was inconsistent with this Court's ruling in *Allen v. State Board of Elections*, 393 U.S. 544 (1969), requiring three-judge panels to hear private enforcement actions filed pursuant to § 5 of the Voting Rights Act of 1965, as amended in 2006, 42 U.S.C. § 1973c.

REASONS FOR GRANTING THE PETITION

This Petition raises important questions of federal law that should be resolved by this Court. The resolution of this question involves the jurisdiction of federal courts to adjudicate claims filed by private parties to enforce the language translation requirements of § 203. If these § 203 actions should be adjudicated by three-judge courts, then districts courts sitting as single-judge courts, as was done in the *Rangel* litigation, do not have jurisdiction to adjudicate such actions. Accordingly this Petition raises an issue of paramount importance that goes to

the threshold inquiry of whether a federal court has the requisite statutory authority to exercise jurisdiction.

Serious questions are raised by the District Court's refusal to convene a three-judge court pursuant to § 204. The District Court's order appears to be in conflict with this Court's ruling in *Allen v. Board of Education* and with the common practice for private enforcement actions of other provisions of the Voting Rights Act of 1965, as amended.

In addition, serious questions of federal law are raised when Petitioners are not permitted to present the question of whether a three-judge court should be convened in § 203 private actions on the grounds that the election that was the basis of the litigation had already occurred. In the *Rangel* appeal, the Ninth Circuit Court concluded that the case was moot. However, due to the extended time schedules presented by elections, the issue of whether to convene a three-judge court will always evade judicial review. In fact such evasion was the reason that the same Ninth Circuit Court in an *en banc* ruling in *Padilla v. Lever* concluded otherwise. Under similar facts the Ninth Circuit Court in *Padilla* held that the appeal was not moot even though the relevant election had occurred. This inconsistent treatment has prevented the Petitioners from presenting for judicial adjudication an issue of law that is of great significance in defining the parameters of a federal court's jurisdiction.

In summary, the Petition presents questions of great importance that warrant judicial review by this Court.

I. An Important Question of a Federal Court's Jurisdiction Is Raised When a District Court Sits as a Single-Judge Court in an Action Required by the Voting Rights Act of 1965, as Amended in 2006, to be Heard Before a Three-Judge Court.

The District Court in denying the request for convening a three court correctly identified "the extent of the confrontation between federal and state power" as the dispositive factor (App. 29). However, the court relied on its own supposition concerning the extent of confrontation in § 203 actions rather than the reasoned judgment of Congress, which mandated that § 203 actions required the balanced and combined reasoning of a three-judge panel.

Section 204 of the Voting Rights Act of 1965, as amended in 2006, is the enforcement provision for other provisions of the Act, specifically §§ 201, 202 and 203. For example, under § 202 of the Act, 42 U.S.C. § 1973aa-1, federal courts have convened three-judge courts to adjudicate actions filed by private plaintiffs to challenge durational residency requirements for federal elections. *See Blumstein v. Ellington*, 337 F.Supp. 323 (D.C. Tenn., 1970), *judgment affirmed*, *Dunn v. Blumstein*, 405 U.S. 330 (1972); *Bishop v. Lomenzo*, 350 F.Supp. 576 (D.C. N.Y., 1972); *Prigmore v. Renfro*, 356 F.Supp. 427 (D.C.

Ala., 1972), *judgment affirmed*, 410 U.S. 919 (1973); *Marston v. Lewis*, 410 U.S. 679 (1973). As with § 203, § 202 does not explicitly confer a private right of action. In summary, since the enforcement provision for both §§ 202 and 203 is derived from § 204, a statutory construction that permits private actions to enforce § 202 and require the convening of three-judge courts should also apply with equal force to private actions filed to enforce § 203.

Thus, the District Court's refusal to convene a three-judge court in this case conflicts with precedent interpreting § 204 in private actions to enforce § 202. This conflict raises an important question regarding a long-standing consistent practice of convening three-judge courts to adjudicate § 202 actions.[1]

In addition, Congress has recognized the importance of continuing the use of three-judge courts in appropriate cases. On June 20, 1975 the United

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[1] Section 201 permits private parties to challenge the application of tests or devices as pre-requisites for voting in any federal, state, or local elections, 42 U.S.C. § 1973aa. The only three reported decisions at the district court level incorporating this statute were before single judge courts. *Torres v. Sachs*, 381 F.Supp. 309 (S.D. N.Y. 1974); *Arroyo v. Tucker*, 372 F.Supp. 764 (E.D. Pa. 1974); *Diaz v. Cobb*, 475 F.Supp.2d 1270 (S.D. Fla 2007). The presence of this authority should not diminish the importance of the jurisdictional question raised by this Petition. At most, this precedent demonstrates that there is a conflict in the application of the three-judge court requirement that should be addressed and resolved by this Court.

States Senate passed what eventually became Pub. Law 94-381, now codified as 28 U.S.C. § 2284 (The Three-Judge Court Statute), in order to reduce the number of cases that statutorily required a three-judge court at the district court level. The accompanying Senate Report 94-204 discussed at great length the original purpose behind three-judge courts, the subsequent growth in the number of cases qualifying for such special consideration, and the judicial changes that had occurred in the intervening years to greatly lessen the necessity for the safeguards provided by three-judge courts. The proposed law restricted the requirement of a three-judge court to those cases involving a state-wide reapportionment of Congressional districts or where required by congressional enactment.

One month after passing Pub. Law 94-381, Congress had the opportunity, while deliberating the renewal in 1975 of the Voting Rights Act of 1965, to remove the three-judge court mandate from the Act in general, or from specific actions authorized by the Act, in this case, the provision in § 204 (then § 203) applying the three-judge court requirement to actions enforcing §§ 201 and 202. In balancing concerns over the federal/state friction inherent in the Voting Rights Act, and a desire to strictly limit the use of three-judge district courts, Congress added the new § 203, concerning the provision of bi-lingual election materials, and placed § 203 under the enforcement provision and its accompanying three-judge court

requirement (re-numbered as § 204) for §§ 201 and 202.

Perhaps the most compelling reason for granting the Petition is the District Court's treatment of *Allen v. State Board of Elections*. *Allen* involved the issues of whether a private § 5 right of action was available, and if available, whether such an action had to be heard before a three-judge court.[2] After having concluded that a private right of action could be filed pursuant to § 5, the Court addressed the requirement of convening a three-judge court. The Court noted that the convening of a three-judge court "places a burden on our federal court system, and may often result in a delay in a matter needing swift initial adjudication." 393 U.S. at 561. Nevertheless, the Court accepted the convening of three-judge courts when specified by Congress, because of Congress' considered judgment that such courts "are desirable

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[2] Under § 5, 42 U.S.C. § 1973c, a covered jurisdiction must secure federal approval of any change affecting voting enacted after a certain date. This federal approval consists of submitting the proposed voting change prior to implementation to the United States Attorney General for a determination that the proposed change does not discriminate against minority voting strength and was not adopted pursuant to a discriminatory purpose. The covered jurisdiction can also secure judicial approval by filing a declaratory judgment action before the United States District Court for the District of Columbia seeking a declaration that the change affecting voting does not have a discriminatory effect on minority voting strength and was not enacted pursuant to a discriminatory purpose. *See generally*, *Lopez v. Monterey County*, 519 U.S. 9 (1996).

in a number of circumstances involving confrontations between state and federal power or in circumstances involving a potential for substantial interference with government administration." *Id.*, at 562. The Court continued, "The Voting Rights Act of 1965 is an example . . . ", since failure to comply with a federal procedure may result in an injunction enjoining the implementation of state enactments and the suspension of election procedures, thereby clearly affecting the delicate balance between federal and state relationships. *Id.* Such considerations are also evident in litigation filed by private parties because "the potential for disruption of state election procedures remains." *Id.*, at 563.

Because this Court in *Allen* deferred to the judgment of Congress when it mandated a three-judge court for § 5 enforcement actions, and because Congress specifically placed § 203 enforcement actions under the three-judge court mandate of § 204 one month after it acted to limit the application of the three judge court requirement to those instances where Congress explicitly mandated them, the conflict presented by the District Court's refusal to convene a three-judge court in this § 203 action presents an important question of federal law that should be addressed and resolved by this Court to insure a consistent application of Congressional intent.

II. An Important Question of Federal Law Is Raised When Petitioners Are Prevented From Presenting an Issue For Adjudication Involving a Federal Court's Jurisdiction in an Action Filed Under the Voting Rights Act of 1965, as Amended in 2006, Solely on the Basis of an Inconsistent Application of a Circuit Court's Precedent Relating to the Conduct of Elections and Mootness.

Due to the substantial importance in preserving the integrity of elections, the interpretation of mootness standards in actions involving the Voting Rights Act of 1965, as amended in 2006, should be consistently applied. In a previous *en banc* ruling in *Padilla*, the Ninth Circuit Court addressed a claim of mootness as it related to the requests for injunctive and declaratory relief in an action addressing whether the language translation requirements of § 203 applied to citizen-circulated petitions requesting a recall election. Since the recall election had already occurred, the Court concluded that the claim for injunctive relief was moot. However, the Court concluded that as to the claim for declaratory relief: "The plaintiffs' claim for declaratory relief, however, falls classically into that category of cases that survive mootness challenges because they are capable of repetition, yet evading review." 463 F.3d at 1049.

In arriving at this conclusion, the Ninth Circuit Court reviewed the unique time constraints presented by actions involving elections. Given the short

timetable involved in the scheduling of elections, the Court noted that such temporal limitations would in effect bar the consideration of legal issues that would repeatedly occur in election challenges.

Even though there was a recent *en banc* decision governing the application of the mootness doctrine in election related issues, the Ninth Circuit Court panel granted the motion to dismiss on the basis of mootness without a reference to the *Padilla en banc* decision. Instead the Ninth Circuit Court panel cited to *Sample v. Johnson*, 771 F.2d 1335, 1338-1339 (9th Cir. 1985). *Sample* involved claim hearings conducted pursuant to the Longshoremen's and Harbor Workers' Compensation Act and did not involve the unique circumstances of shortened election timetables. Since *Padilla* involved the application of the mootness doctrine and its exceptions for elections, a citation to *Padilla* would have been more appropriate. Moreover, since *Padilla* was a decision issued by the full Court, the panel should have distinguished *Padilla*.

This inconsistent application of a Circuit's precedent raises an important question of federal law. Petitioners were precluded from raising the three-judge court issue. This issue as previously discussed involves the important threshold question of whether a federal court has the requisite jurisdiction to adjudicate a § 203 private action as a single-judge court. This jurisdictional question is of primary importance to the consistent application of the Voting Rights Act of 1965, as amended in 2006, an

Act that was specifically designed to eliminate voting discrimination against language minority groups.

CONCLUSION

A federal court cannot act unless it has the requisite jurisdiction to adjudicate a claim. Under the Voting Rights Act of 1965, as amended in 2006, whenever the United States Attorney General initiated an action to enforce § 203 a three-judge court was convened pursuant to § 204. Similarly when a private party sought to enforce the durational residency requirements of § 202 a three-judge court was convened pursuant to § 204. The convening of a three-judge court in § 202 private actions and actions filed by the Attorney General to enforce § 203 was in furtherance of an explicit congressional directive that was incorporated in § 204. In requiring three-judge courts to navigate the delicate balance between the federal interest in avoiding discrimination against language minority groups and the state interest in conducting elections, Congress evaluated the competing interests and struck a balance in favor of convening three-judge courts in actions to enforce § 203. The District Court by denying the motion to convene a three-judge court is inconsistent with this congressional directive and raises important questions of whether the District Court had the jurisdiction to proceed as a single-judge court and adjudicate this § 203 action. Finally, the Ninth Circuit Court's failure

to adhere to its recent *en banc* ruling in *Padilla* effectively precluded review of this important issue.

For these reasons, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SABAS RANGEL; et al.,
Plaintiffs-Appellants,
WILLIAM MELENDEZ,
Plaintiff-Appellee,
and
CAROLYN ANDERSON; et al.,
Plaintiffs,
v.
COUNTY OF MONTEREY, a governmental corporation formed udner [sic] the laws of the State of California; et al.,
Defendants-Appellees,
v.
ENGELL; et al.,
Third-party-plaintiffs-Appellees.

No. 07-15851
D.C. No. CV-06-02202-JW
Northern District of California, San Jose
ORDER
(Filed Apr. 9, 2008)

Before: WALLACE, LEAVY and RYMER, Circuit Judges.

Appellants' "petition for rehearing en banc" filed on March 4, 2008 is construed as a motion for reconsideration en banc of the court's February 19, 2008

order dismissing this appeal as moot. So construed, the motion is denied on behalf of the court. *See* 9th Cir. Gen. Ord. 6.11.

No further filings shall be accepted in this closed case.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SABAS RANGEL;
MARIA BUELL,

Plaintiffs-Appellants

WILLIAM MELENDEZ,

Plaintiff-Appellee

and

CAROLYN ANDERSON;
KEN GRAY; JYL LUTES,

Plaintiffs

v.

COUNTY OF MONTEREY,
a governmental corporation
formed udner [sic] the laws
of the State of California;
CO. OF SACRAMENTO
BOARD OF SUPERVISORS;
ANTHONY ANCHUNDO,

Defendants-Appellees

v.

ENGELL; RANCHO SAN
JUAN OPPOSITION
COALITION,

Third-party-
plaintiffs-Appellees

No. 07-15851

D.C. No.
CV-06-02202-JW

MANDATE

(Filed Apr. 22, 2008)

The judgment of this Court, entered 02/19/08, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

Molly C. Dwyer
Clerk of Court

/s/

By: Theresa Benitez
Deputy Clerk

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SABAS RANGEL; et al., Plaintiffs-Appellants, WILLIAM MELENDEZ, Plaintiff-Appellee, and CAROLYN ANDERSON; et al., Plaintiffs, v. COUNTY OF MONTEREY, a governmental corporation formed udner [sic] the laws of the State of California; et al., Defendants-Appellees, v. ENGELL; et al., Third-party-plaintiffs-Appellees.	No. 07-15851 D.C. No. CV-06-02202-JW Northern District of California, San Jose ORDER (Filed Feb. 19, 2008)

Before: WALLACE, LEAVY and RYMER, Circuit Judges.

We have reviewed appellees' motion to dismiss, appellants' response, appellees' reply, and the record and filings in this appeal.

The sole issue raised by this appeal is whether the district court erred in denying appellants' request to convene a three-judge court to adjudicate appellants' challenge to the validity of a citizen-sponsored referendum that was ultimately placed on the ballot and rejected by voters in a June 5, 2007 election. Because there is no present controversy between the parties as to which effective relief can be granted by this court, this appeal is moot. *See Sample v. Johnson,* 771 F.2d 1335, 1338-1339 (9th Cir. 1985) (stating standard). Accordingly, appellees' motion to dismiss is granted. This appeal is dismissed.

DISMISSED.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In re: MONTEREY REFERENDUM. SABAS RANGEL; et al., Plaintiffs-Appellants, v. COUNTY OF MONTEREY, a governmental corporation formed under the laws of the State of California; et al., Defendants-Appellees, v. RANCHO SAN JUAN OPPOSITION COALITION; et al., Plaintiffs-Appellees.	No. 07-15851 D.C. No. CV-06-02202-JW Northern District of California, San Jose ORDER (Filed Jun. 4, 2007)

Before: LEAVY, RYMER and T.G. NELSON, Circuit Judges.

Appellants' opposed emergency motion for injunctive relief pending appeal is denied. Appellants have not demonstrated either (1) a combination of probable success on the merits and the possibility of irreparable injury or (2) that serious questions are raised and the balance of hardships tips sharply in their favor. *See Los Angeles Memorial Coliseum Comm'n v.*

National Football League, 634 F.2d 1197, 1201 (9th Cir. 1980).

The briefing schedule established previously shall remain in effect.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

In re: County of Monterey Initiative Matter and In re: Monterey Referendum	No. C 06-01407JW C 06-02202 JW **ORDER DENYING *RANGEL* PLAINTIFFS' MOTION FOR AN INJUNCTION PENDING APPEAL** / (Filed Apr. 26, 2007)

On March 29, 2007, the Court issued an order (1) denying *Rangel* Plaintiffs' request for the convening of a three-judge court; (2) granting the *Melendez* and the Rancho San Juan Opposition Coalition Plaintiffs' motion for summary judgment; and (3) ordering Monterey County to submit the initiative and referendum to the voters at the June 5, 2007 County election. (*See* Docket Item No. 73.[1]) Presently before the Court is the *Rangel* Plaintiffs' Motion for an Injunction Pending Appeal of the Court's March 29, 2007 Order. (hereafter, "Motion," Docket Item No. 76.) The *Rangel* Plaintiffs request an injunction pending appeal pursuant to Federal Rule of Civil Procedure 62(c). (Motion at 2.)

[1] Citations are to the docket in Civil Case No. 06-02202 JW.

Rule 62(c) provides, *inter alia*:

> When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

Fed. R. Civ. P. 62(c). In considering a Rule 62 stay of proceedings to enforce a judgment, the court uses the usual standard for considering a preliminary injunction motion. *Tribal Village of Akutan v. Hodel,* 859 F.2d 662, 663 (9th Cir. 1988).[2] Specifically, the moving party must demonstrate either (1) a combination of probable success on the merits and a possibility of irreparable injury or (2) that serious questions are raised and the balance of hardships tips sharply in the moving party's favor. *Los Angeles Memorial Coliseum Comm'n v. NFL,* 634 F.2d 1197, 1201 (9th Cir. 1980).

In this case, the *Rangel* Plaintiffs cannot demonstrate a possibility of irreparable injury, or that the balance of hardships tips sharply in their favor. The injury that the *Rangel* Plaintiffs anticipate is that the referendum will pass "in an election that violates

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[2] Although the specific issue before the Ninth Circuit in *Hodel* was the standard to be used in cases under Federal Rule of Civil Procedure 62(g), the court suggested in dicta that the same standard would apply in Rule 62(c) cases. *Id.*

federal law." (Motion at 6.) However, the injury is presently speculative: it will not occur unless (1) the voters approve the referendum at the June 5, 2007 county election and (2) the Ninth Circuit reverses the Court's March 29, 2007 Order. If the *Rangel* Plaintiffs do suffer this injury, the Court can redress it by enjoining the enforcement of the referendum. Since the *Rangel* Plaintiffs have not demonstrated irreparable injury, the Court need not consider whether they have demonstrated probable success on the merits.[3]

The Court DENIES the *Rangel* Plaintiffs' Motion for an Injunction Pending Appeal.

Dated: April 25, 2007 /s/ James Ware
JAMES WARE
United States District Judge

THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:

Fredric D. Woocher fwoocher@strumwooch.com
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[3] Phrased differently, the *Rangel* Plaintiffs have not shown that the balance of hardships tips sharply in their favor, since the Court can later enjoin the enforcement of the referendum if necessary. Accordingly, the Court need not consider whether the *Rangel* Plaintiffs have demonstrated that their appeal raises "serious questions."

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Dated: April 25, 2007 **Richard W. Wieking, Clerk**

By: /s/ JW Chambers
Elizabeth Garcia
Courtroom Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

NO. C 06-01407 JW
NO. C 06-01730 JW
NO. C 06-02202 JW
NO. C 06-002369 JW

In re County of Monterey Initiative Matter,

In re Monterey Referendum.

ORDER DENYING RANGEL PLAINTIFFS' REQUEST FOR THE CONVENING OF A THREE JUDGE COURT; GRANTING THE MELENDEZ AND THE RANCHO SAN JUAN OPPOSITION COALITION PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT; AND ORDERING THE COUNTY OF MONTEREY TO SUBMIT THE INITIATIVE AND REFERENDUM TO VOTERS OF MONTEREY COUNTY AT THE JUNE 5, 2007 COUNTY ELECTION

/ (Filed Mar. 29, 2007)

I. INTRODUCTION

Monterey County is subject to the federal Voting Rights Act of 1965, 42 U.S.C. §§ 1973 *et seq.* Under the Act, whenever Monterey County provides voting materials it must do so in English and Spanish. These consolidated cases involve citizen-sponsored petitions and materials which were approved by the County for circulation to see if the required number of signatures of registered voters could be obtained. The petitions and associated materials were in English only. On cross-motions for summary judgment, the Court is asked to decide whether as a matter of law, English-only citizen-sponsored petitions and materials in Monterey County are unlawful under the Voting Rights Act.

Based on the *en banc* ruling in *Padilla v. Lever,* 463 F.3d 1046 (9th Cir. 2006), the Court finds that citizen-sponsored petitions in Monterey County are not required to be in Spanish and English. Consequently, the motion for summary judgment should be granted ordering the County of Monterey to submit (1) the Monterey County Quality of Life, Affordable Housing, and Voter Control Initiative and (2) the Referendum Against Resolution No. 05-305, in their entirety and without alteration to the voters of Monterey County at the June 5, 2007 county election.

II. BACKGROUND

This action involves two sets of consolidated cases:

(A) *Rosario Madrigal, et al., v. The County of Monterey, et al.,* C 06-01407 JW and *William Melendez, et al., v. Board of Supervisors of the County of Monterey, et al.,* C 06-1730 consolidated as "***In re County of Monterey Initiative Matter.***"

(B) *Sabas Rangel, et al., v. County of Monterey, et al.,* C 06-02202 JW and *Rancho San Juan Opposition Coalition, et al., v. Board of Supervisors of the County of Monterey, et al.,* C 06-02369 consolidated as "***In re Monterey Referendum.***"

The material facts in each of the consolidated cases are not in dispute.[1] The Court summarizes the relevant facts in each of the consolidated cases for the purposes of this Order:

A. *In re County of Monterey Initiative Matter*

A group of citizens in Monterey County circulated an initiative petition (the "Initiative") which, if passed, would amend certain zoning and land development provisions of the Monterey County General Plan and would require a public election for future zoning changes.

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[1] The facts here are summarized from the Court's March 23, 2006 Order Re: Motion for Injunctive Relief and Declaratory Judgments (*See* Docket Item No. 26, C 06-01407) and August 15, 2006 Order Denying [*Rancho*] Plaintiffs' Motion for a Preliminary Injunction and Staying Action. (*See* Docket Item No. 34, C 06-02369.)

In January of 2006, the proponents of the Initiative filed a notice of their intent to circulate the petition and a copy of the proposed Initiative with the County Elections Department. The County approved the form and content of the petition for circulation among voters and provided the approved petition, Title and Summary materials to the proponents for publication in a newspaper and for circulation to registered voters. All of these materials were only printed in English.

On February 24, 2006, a group of Spanish-speaking citizens (the "*Madrigal* Plaintiffs") filed a lawsuit against Monterey County in this Court. The *Madrigal* Plaintiffs asked for a declaratory judgment that the English-only materials violated the Voting Rights Act. The *Madrigal* Plaintiffs requested an injunction against further processing of the Initiative.

On February 28, 2006, after receiving a legal report addressing procedural and substantive concerns with respect to the content and form of the Initiative under both federal and California law, including the lack of English and Spanish materials, the Board of Supervisors voted not to place the Initiative on the ballot.

On March 1, 2006, the proponents of the initiative (the "*Melendez* Plaintiffs") filed a mandamus action in the Superior Court of the County of Monterey to compel the County to place the Initiative on the ballot. Since the requisite number of qualified signatures had been obtained, the *Melendez* Plaintiffs

alleged that the County had a ministerial duty to place the Initiative on the ballot. On March 7, 2006, Monterey County removed the *Melendez* action to this Court citing as a basis of subject matter jurisdiction 28 U.S.C. § 1443(2), alleging that it refused to place the Initiative on the ballot because the Initiative was inconsistent with the Voting Rights Act.

B. *In re Monterey Referendum*

On November 7, 2005, the Monterey County Board of Supervisors ("Board") passed a resolution to amend certain provisions of the Monterey County General Plan, the Greater Salinas Area Land Use Plan, and the Rancho San Juan Area of Development Concentration Development Guidelines and Principles ("Resolution"). The Plaintiffs in the *Rancho San Juan Opposition Coalition* action ("*Rancho* Plaintiffs") began circulating a referendum against the Board's Resolution ("Referendum"). The Referendum materials were only printed in English.

The Board initially ordered that the Referendum be placed on the June 2006 ballot. In response, on March 27, 2006, Plaintiffs Sabas Rangel and Maria Buell (collectively, the "*Rangel* Plaintiffs") filed this in the Northern District of California. The *Rangel* Plaintiffs seek, *inter alia*, a declaration pursuant to 28 U.S.C. §§ 2201 and 2202 that the Referendum is invalid under Section 203 of the Voting Rights Act because it was printed and circulated only in English.

On March 28, 2006, the Board withdrew the Referendum from the June ballot, citing the Ninth Circuit's initial decision in *Padilla v. Lever,* 429 F.3d 910 (9th Cir. 2005), *opinion withdrawn,* 446 F.3d 963 (2006). On April 3, 2006, the *Rancho* action was filed seeking declaratory and injunctive relief to compel the Board to put the Referendum to voters at the next election. On August 15, 2006, the Court stayed the action pending the Ninth Circuit's *en banc* review of the panel's decision in *Padilla.*

C. ***Procedural History***

The Court consolidated the two suits as "*In re Initiative Matter.*" On March 23, 2006, pursuant to the holding of *Padilla v. Lever,* 429 F.3d 910 (9th Cir. 2005), *opinion withdrawn,* 446 F.3d 963 (2006), the Court permanently enjoined the County for processing, certifying or adopting the Initiative and from placing it on a ballot for a future County election unless or until first properly circulating it in compliance with the Voting Rights Act. (*See* Docket Item No. 26, 06-01470.)

The *Melendez* and *Rancho* Plaintiffs appealed the Court's Orders enjoining the County from placing the Initiative and the Referendum on the ballot.

In September of 2006, the Ninth Circuit issued its *en banc* ruling in *Padilla.* Following this ruling, all parties to this litigation filed cross-motions for summary judgment that are currently before the Court. (*See* Docket Item Nos. 23, 26, 28, 29, 51, 52, 55, 57,

60, consolidated cases C 06-01407 and C 06-02202.) With respect to those motions, *Rangel* Plaintiffs filed a motion entitled: A Request for the Convening of a Three-Judge Court.

On February 6, 2007, the *Madrigal* Plaintiffs voluntarily dismissed their action against the County, without prejudice. Thus, the only case left in the *In re County of Monterey Initiative Matter* is the *Rancho San Juan Opposition Coalition, et al., v. Board of Supervisors of the County of Monterey, et al.,* C 06-02369.

Before the Court are the following issues to be decided:

1) The *Rangel* Plaintiffs' motion for the convening of a three-judge panel to hear the motions regarding the Referendum matter.

2) The *Rancho* Plaintiffs' request to enjoin the County either to repeal Resolution No. 05-305 in its entirety or to submit the Referendum Against Resolution No. 05-305, without alteration, to the voters of Monterey County at the June 5, 2007 county election.

3) The *Melendez* Plaintiffs' request to remand the case to state court or in the alternative, compel the County to enact the Initiative entitled "The Monterey County Quality of Life, Affordable Housing, and Voter Control Initiative" in its entirely [sic] or to submit the Initiative, without alteration, to the voters on Monterey County at the June 5, 2007 county election.

4) The County's request for the Court to dismiss the *Melendez,* case since the controversy has been mooted by a promise to place the Initiative on the June 2007 ballot.

5) As a preliminary matter, in all four lawsuits, the Defendants are the County of Monterey, Board of Supervisors of the County of Monterey, and Tony Anchundo, in his capacity as Monterey County Registrar of Voters. Suits against an official in her or his official capacity are treated as suits against the entity on whose behalf that official acts. In such suits, the real party in interest is the government on whose behalf that official acts. *Hafer v. Melo,* 502 U.S. 21, 25 (1991). Accordingly, on its own motion, the Court dismisses the Board of Supervisors and Tony Anchundo as Defendants, leaving these actions as ones against the County of Monterey.

III. DISCUSSION

A. The Rangel Plaintiffs' Motion for the Convening of a Three Judge Court

The *Rangel* Plaintiffs contend that this case requires a three-judge court pursuant to Section 204 of the Voting Rights Act, 42 U.S.C. § 1973aa-2, which authorizes the Attorney General to institute an action to enforce Section 203.[2] (Plaintiffs Rangel, *Et Al.*,

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[2] The County Defendants do not oppose the *Rangel* Plaintiffs' request for a three-judge court. (*See* Docket Item No. 46.)

Memorandum of Points and Authorities in Support of Their Request for the Convening of a Three Judge Court at 4, hereafter, "Motion," Docket Item No. 44.) The *Rancho* Plaintiffs oppose their request, contending (1) there is no authority for an expansive interpretation of Section 204 to cover private actions, given that the statutory language refers only to actions instituted by the Attorney General in the name of the United States and (2) if a three-judge district court is necessary at all, it is required only in the *Rangel* case, as the *Rancho* Plaintiffs' suit is based on California law rather than the Voting Rights Act. (Rancho San Juan Opposition Coalition's Opposition to *Rangel* Plaintiffs' Request for the Convening of a Three Judge Court at 2-4, hereafter, "Opposition," Docket Item No. 45.) Since the *Rangel* Plaintiffs are the only party requesting a three-judge court, and only the *Rangel* action was filed pursuant to the Voting Rights Act, the Court's analysis concerns only whether the *Rangel* action necessitates the convening of a three-judge district court.

1. The Voting Rights Act

Section 203 of the Voting Rights Act was enacted by Congress to address the effective exclusion of language minorities from participation in the electoral process. 42 U.S.C. § 1973aa-1a. The section bars covered states or political subdivisions from providing

voting materials[3] in English only. 42 U.S.C. § 1973aa-1a(b)(1). Covered political subdivisions include those where (1) more than five percent of voting age citizens are limited-English proficient and members of a single language minority and (2) the illiteracy of the citizens in the language minority as a group is higher than the national illiteracy rate. 42 U.S.C. § 1973aa-1a(b)(2)(A).

Section 204 of the Voting Rights Act authorizes the Attorney General to bring suit for equitable relief on behalf of the United States against a state or political subdivision that seeks to deny the right to vote in an election in violation of Section 203. 42 U.S.C. § 1973aa-2. Section 204 provides that "[a]n action under this subsection" shall be heard by a court of three judges in accordance with 28 U.S.C. § 2284. *Id.*

2. Three Judge Panel

a. *Rangel* Plaintiffs' Basis for Suit

A seminal question is the jurisdictional basis for the Court to hear the Voting Rights Act component of the *Rangel* Plaintiffs' action. In their complaint, the *Rangel* Plaintiffs invoke jurisdiction pursuant to, *inter alia*, 28 U.S.C. § 1343 and 42 U.S.C. § 1973aa-1a

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[3] Voting materials include registration or voting notices, forms, instructions, assistance, or other materials or language relating to the electoral process, including ballots. 42 U.S.C. § 1973aa-1a(c).

(Section 203 of the Voting Rights Act). (Complaint for Declaratory and Injunctive Relief ¶¶ 25-34, Docket Item No. 1.)

Congress granted the district courts exclusive jurisdiction of "any civil action authorized by law" to be commenced by any person "[t]o recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote." 28 U.S.C. § 1343. Thus, the relevant section of the Voting Rights Act must authorize private litigants to secure the relief they seek. *See Allen v. State Bd. of Elec.*, 393 U.S. 544, 554 (1969).

The parties do not cite, nor has the Court found, any case that has explicitly held that a private right of action exists to redress violations of Section 203 of the Voting Rights Act. However, the Ninth Circuit, *en banc,* recently entertained a Section 203 action brought by private plaintiffs, without explicitly stating the jurisdictional basis for the action. *See Padilla v. Lever,* 463 F.3d 1046 (9th Cir. 2006). Following *Padilla,* the Court holds that it has jurisdiction to hear a Section 203 action brought by private plaintiffs.

b. Section 204 and the Three-Judge Court Requirement

The next issue is whether private plaintiffs have a right to bring suit specifically under Section 204 of the Voting Rights Act.[4] As previously described, Section 204, by its plain terms, authorizes only suits brought by the United States Attorney General. The thrust of the *Rangel* Plaintiffs' argument is that they are entitled to a three-judge court by analogy to the Supreme Court's Section 5 jurisprudence in *Allen*. (Motion at 4-7.)

In *Allen*, private individuals brought suit alleging that amendments to certain Virginia and Mississippi election laws fell within the purview of Section 5 of the Voting Rights Act. As such, the plaintiffs alleged, the states were required to comply with the Act's approval procedures prior to enforcing the laws.[5] 393 U.S. at 547-49.

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[4] The Court construes Section 204's requirement of a three-judge court for "[a]n action under this subsection," to refer to actions brought specifically under Section 204. Thus, whether the *Rangel* Plaintiffs have a statutory right to a three-judge court depends on whether the *Rangel* action arises under Section 204.

[5] Section 5 of the Act restricts covered states' ability to pass a voting qualification, prerequisite, standard, practice, or procedure different from those in effect on November 1, 1964. Specifically, no person can be deprived of his or her right to vote for failure to comply with the new enactment until the state seeks and receives a declaratory judgment from the United States District Court for the District of Columbia that the new

(Continued on following page)

The Supreme Court first addressed the threshold question whether private litigants could bring suit under Section 5 of the Voting Rights Act. *Id.* at 554. Then-Chief Justice Warren, writing for the majority, found that Section 5 of the Act was among a group of federal statutes passed to protect a particular class of citizens. *Id.* at 557. Though the section did not specifically authorize members of the protected class to initiate suit, the Court held that an implied private right of action existed. *Id.* To reach this holding, the Court considered the following four factors. First, the Court held that the language of Section 5 that describes an individual right ("no person shall be denied the right to vote for failure to comply . . . "), considered with the major purposes of the Act, supported a private right of action. *Id.* at 555. Second, the Court noted that Congress had not chosen to explicitly exclude private actions.[6] *Id.* Third, the Court highlighted the limited nature of the implied private right of action that it had found. Specifically, the only issue in a Section 5 suit brought by a private plaintiff is

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enactment will not deny or abridge the right to vote based on race or color. 42 U.S.C. § 1973c.

[6] The Supreme Court also held that 28 U.S.C. § 1343, in conjunction with Section 12(f) of the Act, 42 U.S.C. § 1973j(f), "might be viewed as authorizing private actions." Section 12(f) provides, "The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether a person asserting rights under the provisions of subchapters I-A to I-C of this chapter shall have exhausted any administrative or other remedies that may be provided by law."

whether a state must submit new voting legislation for approval. Substantive questions, such whether the state's new legislation actually had a discriminatory purpose or effect, would not be decided in the private action.[7] *Id.* at 555 n.19. Lastly, the Court found that the broad purposes of the Voting Rights Act could not be fulfilled if the Attorney General had sole discretion whether to institute litigation. With the Attorney General's "limited staff," he or she might often be unable to uncover quickly the new regulations and enactments passed at the various levels of state government. Thus, an implied private right of action was necessary to ensure that Section 5's guarantees did not prove an "empty promise." *Id.* at 556-57.

Having found that the plaintiffs had an implied private right of action, the Court next considered whether their suit was properly heard by a three-judge district court – that is, whether there was a statutory basis to convene a three-judge court. *Id.* at 560-61. Section 5 provides, "Any action *under this section* shall be heard and determined by a court of three judges . . . " 42 U.S.C. § 1973c (emphasis added). Under the Court's interpretation, three types of Section 5 suits were possible: (1) a suit brought by

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[7] For the same reason, the Court held that Section 14(b)'s requirement that actions be brought in the District Court for the District of Columbia applied only to actions brought by the government. Private litigants could bring "coverage" litigation in any proper federal district court pursuant to Section 12 of the Act and 28 U.S.C. § 1343(4). *Id.* at 557-560.

the State for a declaratory judgment; (2) a suit brought by an individual for a declaratory judgment and injunctive relief, claiming that the state legislation subject to Section 5 must be submitted for federal scrutiny; and (3) a suit for injunctive relief brought by the Attorney General to prohibit the enforcement of a new regulation because of the state's failure to obtain Section 5 approval. *Id.* at 561. The Court held that all of these suits were brought "under" Section 5 a; the Court held separately that the words "under this section" authorized a three judge court in all three types of cases. *Id.*

The Court considered reasons against extending the three-judge court requirement beyond the plain language of Section 5. *Id.* First, convening a three-judge court burdens the federal system and often delays matters requiring swift adjudication. Second, the decisions of three-judge district courts are directly appealable to the Supreme Court, which deprives the Supreme Court of the "wise and often crucial adjudication" of the intermediate appellate courts. *Id.* at 561-62. Accordingly, congressional enactments providing for the convening of three-judge courts are strictly construed. *Id.* (citing *Phillips v. United States,* 312 U.S. 246 (1941)).

On the other hand, the Court acknowledged that Congress had legitimate reasons for adopting three-judge court legislation. *Id.* Congress has determined that three-judge courts are desirable in particular circumstances involving confrontations between federal and state power or in circumstances involving

a potential for substantial interference with government administration. *Id.* at 562. Specifically with respect to Section 5, the Supreme Court held:

> The problems [of federal supervision over the enforcement of state legislation] are especially difficult where the enforcement of state enactments may be enjoined and state election procedures suspended because the state has failed to comply with a federal approval procedure . . . In drafting § 5, Congress apparently concluded that if the governing authorities of a State differ with the Attorney General of the United States concerning the purpose or effect of a change in voting procedures, it is inappropriate to have that difference resolved by a single district judge. The clash between federal and state power and the potential disruption to state government are apparent.

Id. The Court found that there exists "no less a clash and potential for disruption" when the issue is whether a state enactment is subject to Section 5. *Id.* Accordingly, given the "extraordinary nature of the Act in general, and the unique approval requirements of § 5," Congress intended that all disputes involving Section 5 coverage be determined by a district court of three judges. *Id.*

There are several substantive differences between *Allen* and this Section 203 action brought by private litigants. First, the Supreme Court made explicit the source of the statutory authority to hear a Section 5 action brought by a private plaintiff:

Section 5 itself, the same section that provided for a three-judge court. In contrast, no federal court has held that the statutory authority to hear a Section 203 action brought by a private plaintiff is Section 204. Second, the extent of the confrontation between federal and state power is much less in a Section 203 case than in a Section 5 case. Section 5 regulates covered states' ability to adjust their voting procedures, a substantial intrusion on state sovereignty. In contrast, a Section 203 action only requires that the covered state make voting materials available in languages other than English. Thus, the policy reasons that existed in *Allen* for finding a statutory right to a three-judge court do not exist here.

On the other hand, the policies against convening a three-judge court identified by the Supreme Court in *Allen* are applicable here. A three-judge court would delay the resolution of this dispute. Additionally, the appeal from decision of a three-judge district court is directly to the Supreme Court. *See* 28 U.S.C. § 1253. Accordingly, as noted disapprovingly by the *Allen* Court, the Supreme Court would be deprived of the benefit of the Ninth Circuit's adjudication in this case.

The Court finds that the *Rangel* Plaintiffs' suit does not arise under Section 204 of the Voting Rights Act. Accordingly, the *Rangel* Plaintiffs are not entitled to litigate this case before a three-judge court.

B. Cross-motions for Summary Judgment

1. *In re Monterey Referendum*

The controversy in this consolidated case is purely a legal dispute, namely, is there sufficient legal similarity between a recall petition and a referendum petition that *Padilla* is controlling authority? The Court evaluates the Referendum process to determine whether there is any meaningful distinction between that process and the recall process addressed by *Padilla.*

a. The Referendum Process in California

The constitutional referendum power is the right reserved to the people to approve or reject statutes or parts of statutes that have been enacted by a legislative body. Cal. Const., art. II, sec. 9(a). The procedures governing introduction and passage of a referendum against a City or County ordinance are set forth in Cal. Elec. Code sections 9235-9247 and 9140-9147, respectively.

To initiate the referendum process, the opponent of the ordinance must:

1) First circulate a petition and obtain the requisite number of voter signatures to qualify the petition. *See generally,* Cal. Elec. Code § 9237.

2) Each referendum petition must contain a caption at the top of each page stating "Referendum Against an Ordinance Passed by the City Council."[8] *Id.* at §§ 9238(a) and 9147(a).

3) Each section of the petition must provide a) the identifying number or title of the ordinance, b) relevant text of the ordinance being challenged, and c) petitions challenging a City ordinance must additionally attach a declaration of the petition circulator stating his or her residence address at the time of the execution of the declaration and qualification to register as a voter of the City. *Id.* at § 9238(b), (c) and 9147(b).

If the opponent of the statute gathers the requisite number of signatures, he or she must file a signed petition with the relevant City or County within 30 days after adoption, but before the ordinance goes into effect. Cal. Elec. Code §§ 9242 and 9144. City and County ordinances become effective 30 days after adoption. *Id.* at §§ 9235 and 9141(b). If a referendum petition is submitted within 30 days of the adoption of the challenged ordinance, then the "effective date of the ordinance [is] suspended and the legislative body [is required] to reconsider the ordinance." Id. at §§ 9237 and 9144.

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[8] For petitions opposing a County ordinance, the heading must read "Referendum Against an Ordinance Passed by the Board of Supervisors. Cal. Elec. Code § 9147(a).

Following the filing of a petition challenging a city ordinance, the City must examine sufficiency of the petition, validity of signatures, and all the other procedural requirements as set forth in Cal. Elec. Code sections 9114-15, 9210, 100, 104, and 105. The City is then required to certify that a sufficient number of valid signatures have been obtained. Cal. Elec. Code § 9239-40. If the petition is challenging a County ordinance, the County is required to review the petition to ensure that it complies with all of the procedural requirements set out in Cal. Elec. Code § 9100 et seq., which are the same as the requirements for an initiative petition. Id. at § 9146. Following this examination, the City Council or Board of Board of [sic] Supervisors has two options. First, the City Council or Board of Supervisors may repeal the ordinance against which the petition is filed without submitting it to the public vote. *Id.* at §§ 9241 and 9145 Alternatively, the Council may submit the matter to a vote of the public at either a general or special election. *Id.*

b. ***Padilla v. Lever***

The *en banc Padilla* decision primarily focused on whether the recall petitions circulated by the proponents of the recall were subject to Section 203 because they were "provided" by the county. 463 F.3d at 1050

Section 203 of the Voting Rights Act is codified at 42 U.S.C. § 1973aa-la. Section 203 provides:

> Whenever any State or political subdivision subject to the prohibition of subsection (b) of this section provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in the language of the applicable minority group as well as in the English language.

42 U.S.C. § 1973aa-1a(c).

The *Padilla* Court held that regulatory processes do not transform petitions *"privately initiated, drafted,* and *circulated* by the proponents into petitions 'provided' by the County for purposes of the Voting Rights Act." *Id.* at 1051. (emphasis added.) From this, the Court derives that a petition is not provided by the County if it is 1) privately initiated, 2) drafted, and 3) circulated by proponents of the petitions.

The County does not dispute that the Referendum petition was privately initiated and circulated by certain citizens in the County of Monterey. The County contends, however, that the County has an integral role in the Referendum process and that the content of the Referendum is essentially drafted by the government.

First, among the regulatory processes, the County contends that the government plays an integral role to ensure that a referendum petition conforms to the statutory requirements. They are:

(1) The Code has specific requirements as to the information required of petition signers;

(2) There are time limits on when the petition may be filed;

(3) The local elections officer must examine and verify the number of valid signatures on the petition, and is provided with detailed direction on how to do so.

(4) The Registrar is required to forward the measure to the County Counsel for preparation of an impartial analysis of the measure and its effect on existing law, and if necessary the county auditor may be required for a similar analysis of the fiscal effect of the ordinance.

(5) The County actually supplies the text that is before the signers of the petition.

The Court finds that the first two steps described by the County are regulatory in nature. The *en banc* opinion explains:

> It is true that California regulates recall petitions in some detail. The petitions must follow a format provided by the Secretary of State, and must use a minimum type size. [internal citations.] The petition also must include a copy of the Notice of Intention, the

> statement of grounds for recall, and the answer of the targeted officer if the officer submitted one. [internal citations.] But these regulations do not mean that the petitions are *provided* by the State or subdivision. The form is regulated by the State, but the proponents fill out the petition, supply the grounds of recall, and have the petitions printed at their own expense. The fact that, under Cal. Elec. Code § 1104(a), the Secretary of State "provides" the format does not mean that the State "provides" the petitions themselves within the meaning of the Voting Rights Act.

Padilla, 463 F.3d at 1051. (emphasis in the original.)

Second, the fact that election officials must later verify the signatures on the petition or that the County Counsel prepares a separate analysis of the Referendum is not dispositive. The word "provides" connotes that the involvement by the County must occur before the petition is circulated. As described by the County, the Referendum petition does not get submitted to the election officials or the County Counsel for review until after it has been circulated. The Counsel report does not become part of the Referendum, but rather is an advisory report submitted to the Board of Supervisors to weigh the impact on existing law. While this precise issue was not addressed in *Padilla,* the Court finds that because it occurs after the petition has already been circulated for signatures, it falls into the "regulatory process."

Finally, the County contends that the government drafts the Referendum, because the code requires that the text of the ordinance being challenged be replicated in the petition itself. While this issue was not precisely addressed by *Padilla*, that Court addressed a similar problem. The plaintiffs in *Padilla* argued that "because the election officials are charged under state law with ascertaining whether proposed form and *wording* of the petition meets the requirements of the [election code] [internal citations], they are dictating the content of the petitions to the degree that the petitions may be said to be 'provided' by the county." 460 F.3d at 1051. (emphasis in original.) With respect to the "wording" requirement, the *en banc* Court explained:

> But there is nothing in the chapter governing elections that specifies the actual wording that proponents must use, for example, in stating their grounds for recall. Nor does the record contain any hint that the election officials determine the contents of the petition; they merely make sure that the petitions are in the form specified by statute. It is not reasonable to hold that this regulatory process transforms petitions privately initiated, drafted, and circulated by the proponents into petitions "provided" by the County for the purposes of the Voting Rights Act.

Id.

The Court finds that the County has misconstrued the phrase "actual wording" described in the

above text. While it is true that the code requires proponents to copy of exact text of the ordinance being challenged, the purpose of this requirement to inform the signers of the ordinance being challenged. To the extent that the County provided "actual wording," it provided the language of the ordinance that is the subject of the Referendum. It does not follow from inclusion of the ordinance that the County is providing the Referendum petition itself.

The Court finds that the Referendum at issue was privately initiated, drafted, and circulated by its proponents and thus, is not subject to the dual-language requirement of Section 203 of the Voting Rights Act.

2. ***In re County of Monterey Initiative Matter***

In this consolidated action, *Rosario Madrigal, et al., v. County of Monterey, et al.,* C 06-01407, has been dismissed without prejudice pursuant to the Stipulation for Voluntary Dismissal. (*See* Docket Item No. 47.) In the remaining case, *William Melendez, et al., v. Board of Supervisors of the County of Monterey, et al.,* C 06-1730, the *Melendez* Plaintiffs contend that because County has agreed to submit the Initiative to a vote of the County electorate at the June 5, 2007 election, there is no longer a basis for federal jurisdiction. The *Melendez* Plaintiffs seek a remand to the state court, or in the alternative seek (1) a declaration that the County violated its duties

under the California Constitution and the California Elections Code by refusing either to adopt the Initiative without alteration or to submit it to a vote of the people; (2) an injunction requiring the County either to adopt the Initiative without alteration, or to submit the Initiative to the voters of the County at the next county election.

The Court finds that bifurcation of the federal and state law issues is judicially inefficient. The remedies prayed for in the *Melendez* Plaintiffs' state court Complaint do not differ from the remedies the Court will provide, namely, injunctive relief. There is no longer an objection by the *Madrigal* Plaintiffs that the Initiative violates Section 203. The County has represented in its papers that it will place the Initiative on the June 2007 ballot. Accordingly, the Court GRANTS the *Melendez* Plaintiffs an injunction requiring the County to submit the Initiative, without alteration, to the voters of the County at the June 5, 2007 county election.

IV. CONCLUSION

The Court DENIES the *Rangel* Plaintiffs' Request for the Convening of a Three-Judge Court in the *In re Monterey Referendum* case. The Court GRANTS the *Melendez* and *Rancho* Plaintiffs' motions for summary judgment and ORDERS as follows: The County of Monterey shall submit (1) the Monterey County Quality of Life, Affordable Housing, and Voter Control Initiative and (2) the Referendum

Against Resolution No. 05-305, in their entirety and without alteration, to the voters of Monterey County at the June 5, 2007 county election.

Dated: March 29, 2007 /s/ James Ware
JAMES WARE
United States District Judge

THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:

Ciaran O'Sullivan cosullivan@nossaman.com
Fredric D. Woocher fwoocher@strumwooch.com
Joaquin Guadalupe Avila avilaj@seattleu.edu
Leroy W. Blankenship blankenshipl@co.monterey.ca.us
Michael J. Strumwasser
mstrumwasser@strumwooch.com
Stephen N. Roberts sroberts@nossaman.com

Dated: March 29, 2007 **Richard W. Wieking, Clerk**

By: /s/ JW Chambers
Elizabeth Garcia
Courtroom Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

NO. C 06-01730 JW
NO. C 06-02202 JW
NO. C 06-02369 JW

In re County of Monterey Initiative Matter

and

In re Monterey Referendum /

SUMMARY JUDGMENT

(Filed Mar. 29, 2007)

Pursuant to the Court's March 28, 2007 Order Denying Rangel Plaintiffs' Request for the Convening of a Three Judge Court; Granting the Melendez and Rancho San Juan Opposition Coalition Plaintiffs' Motion for Summary Judgment; and Ordering the County of Monterey to Submit the Initiative and Referendum to Voters of Monterey County at the June 5, 2007 County Election, the Court enters judgment as follows:

1) In case **C 06-01730**, judgment is entered in favor of Plaintiffs William Melendez, Ken Gray, Jyl Jutes, Carolyn Anderson, and Landwatch Monterey County, against Defendant the County of Monterey. The County shall submit the Monterey County Quality of Life, Affordable Housing, and Voter Control Initiative, in its entirety and without alteration, to the voters of Monterey County at the June 5, 2007 county election. The Plaintiffs

are entitled to recover reasonable costs and fees.

2) In case **C 06-02202**, judgment is entered in favor of Defendant the County of Monterey, against Plaintiffs Sabas Rangel and Maria Buell. The injunction against placing the Referendum Against Resolution No. 05-305 is denied.

3) In case **C 06-02369**, judgment is entered in favor of Plaintiffs Rancho San Juan Opposition Coalition, Citizens for Responsible Growth, and Julie Engell, against Defendants the County of Monterey. The County shall submit the Referendum Against Resolution No. 05-305, in its entirety and without alteration, to the voters of Monterey County at the June 5, 2007 county election. The Plaintiffs are entitled to recover reasonable costs and fees.

Upon timely request, the Court reserves for post-judgment consideration of any motion for reasonable attorneys' fees or costs by a prevailing party.

Dated: March 29, 2007 /s/ James Ware
JAMES WARE
United States District Judge

THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:

Ciaran O'Sullivan *cosullivan@nossaman.com*
Fredric D. Woocher *fwoocher@strumwooch.com*
Joaquin Guadalupe Avila *avilaj@seattleu.edu*
Leroy W. Blankenship *blankenshipl@co.monterey.ca.us*
Michael J. Strumwasser *mstrumwasser@strumwooch.com*
Stephen N. Roberts *sroberts@nossaman.com*

Dated: March 29, 2007 Richard W. Wieking, Clerk

By: /s/ JW Chambers
Elizabeth Garcia
Courtroom Deputy

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Northern District of California
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Case Name:	In re Monterey Referendum
Case Number:	5:06-cv-2202
Filer:	Sabas Rangel Maria Buell
Document Number:	86

Docket Text:

NOTICE OF APPEAL as to [73] Order on Motion for Summary Judgment [74] Order by Sabas Rangel, Maria Buell. Filing fee $ 455, receipt number 5461100889. (cv, COURT STAFF) (Filed on 4/30/2007)

The following document(s) are associated with this transaction:

5:06-cv-2202 Notice will be electronically mailed to:

Joaquin Guadalupe Avila avilaj@seattleu.edu

Stephen N. Roberts sroberts@nossaman.com, lstanford@nossaman.com

Fredric D. Woocher fwoocher@strumwooch.com, pklein@strumwooch.com

5:06-cv-2202 Notice will be delivered by other means to:

Joaquin G. Avila (State Bar No. 56484)
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Los Angeles, CA 90014
Telephone: (206) 398-4117
Facsimile: (206) 398-4036

Attorney for Plaintiffs
SABAS RANGEL and MARIA BUELL

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

In re: Monterey Referendum	) CIVIL ACTION NO.) C 06-02202 JW) PLAINTIFFS RANGEL, ET AL., NOTICE OF APPEAL AND REPRESENTATION STATEMENT

Courtroom: 8
Judge: Hon. James Ware

Notice is hereby given that Sabas Rangel and Maria Buell Plaintiffs in the above named consolidated case, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the Order titled "Order Denying Rangel Plaintiff's Request for the Convening of Three Judge Court; Granting The Melendez and the Rancho San Juan Opposition Coalition Plaintiffs' Motion for Summary Judgment; and Ordering the County of Monterey to Submit the Initiative and Referendum to Voters of Monterey County at the June 5, 2007 County Election" and

from the "Summary Judgment" entered in this action on March 29, 2007.

Dated: April 28, 2007 Joaquin G. Avila

/s/ Joaquin Avila
Attorney for Plaintiffs-Appellants
Sabas Rangel and Maria Buell

REPRESENTATION STATEMENT

Pursuant to Federal Rule of Appellate Procedure 12(b) and Circuit Rules 3-2 and 12-2, the names and addresses of counsel for each party who are subject to this appeal are as follows:

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Attorneys for Plaintiffs-Appellees Rancho San Juan Opposition Coalition, Citizens for Responsible Growth, and Julie Engell

Dated: April 28, 2007 Joaquin G. Avila

/s/ Joaquin Avila
Attorney for Plaintiffs-Appellants
Sabas Rangel and Maria Buell

USCA DOCKET # (IF KNOWN)

[SEAL] Not Known

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
CIVIL APPEALS DOCKETING STATEMENT

PLEASE ATTACH ADDITIONAL PAGES IF NECESSARY.

TITLE IN FULL:

In re: Monterey Referendum

DISTRICT: United States District Court
JUDGE: Hon. James Ware for the Northern District of California

DISTRICT COURT NUMBER: C 06-02202 JW

DATE NOTICE OF APPEAL FILED: IS THIS A CROSS-APPEAL? YES

IF THIS MATTER HAS BEEN BEFORE THIS COURT PREVIOUSLY, PLEASE PROVIDE THE DOCKET NUMBER AND CITATION (IF ANY):

BRIEF DESCRIPTION OF NATURE OF ACTION AND RESULT BELOW: Whether the language translation requirements of Section 203 of the Voting Rights Act of 1965, as amended in 2006, 42 U.S.C. § 1973aa-1a, requires referendum petitions to be translated into Spanish. The District Court concluded that Section 203 does not require the translation of referendum petitions.

PRINCIPAL ISSUES PROPOSED TO BE RAISED ON APPEAL: Whether the District Court erred in not convening a three judge court pursuant to Section 204 of the Voting Rights Act of 1965, as amended in 2006, 42 U.S.C. § 1973aa-2, to adjudicate whether the language translation requirements of Section 203 apply to referendum petitions.

PLEASE IDENTIFY ANY OTHER LEGAL PROCEEDING THAT MAY HAVE A BEARING ON THIS CASE (INCLUDING PENDING DISTRICT COURT POST-JUDGMENT MOTIONS): None at this time. The District Court on April 26, 2007, denied the motion filed by Plaintiffs-Appellants Rangel, *et al.*, pursuant to Federal Rule of Civil Procedure 62(c) for an injunction pending appeal.

DOES THIS APPEAL INVOLVE ANY OF THE FOLLOWING:

Possibility of settlement

Likelihood that intervening precedent will control outcome of appeal

√ Likelihood of a motion to expedite or to stay the appeal, or other procedural matters

(Specify) Plaintiffs-Appellants Rangel, *et al.*, anticipate filing an emergency motion for injunction pending the adjudication of this appeal.

Any other information relevant to this inclusion of this case in the Mediation Program

Possibility parties would stipulate to binding award by Appellate Commissioner in lieu of submission to judges

LOWER COURT INFORMATION

JURISDICTION		DISTRICT COURT DISPOSITION	
FEDERAL	APPELLATE	TYPE OF JUDGMENT/ ORDER APPEALED	RELIEF
√ Federal Question Diversity Other (Specify):	√ Final Decision of District Court Interlocutory Decision Appealable As of Right Interlocutory Order Certified by District Judge (Specify): Other (Specify):	Default Judgment Dismissal/ jurisdiction Dismissal/ merits √ Summary Judgment Judgment/ court Decision Judgment/ jury Verdict Declaratory Judgment Judgment as a Matter of Law Other (Specify):	Damages: Sought $ Awarded $ Injunctions: Preliminary √ Permanent Granted √ Denied Attorney Fees: Sought $ Awarded $ Pending Costs: $

CERTIFICATE OF COUNSEL

I CERTIFY THAT:

1. Copies of Order/Judgment Appealed Form Art Attached.

2. A Current Service List or Representation Statement With Telephone and Fax Numbers Are Attached (See 9th Cir. Rule 3-2).

3. A Copy of This Civil Appeals Docketing Statement Was Served in Compliance with FRAP 25.

4. I Understand That Failure to Comply With These Filing Requirements May Result in Sanctions, Including Dismissal of This Appeal.

/s/ Joaquin Avila — 4/28/07
Signature Date — Date

COUNSEL WHO COMPLETED THIS FORM

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